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IN THE

Supreme Court of the United States

OCTOBER TERM, 1930

No. 67

RAY LYMAN WILBUR, AS SECRETARY OF THE INTERIOR, PETITIONER

v.

THE UNITED STATES OF AMERICA, EX REL. CHESTATEE PYRITES & CHEMICAL CORPORATION, A CORPORATION

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI

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GENERAL STATEMENT

What was said in response to the petition in Wilbur, as Secretary of the Interior, petitioner, v. The United States of America, ex rel., Vindicator Consolidated Gold Mining Company, applies to the petition here in particulars as follows:

1. Jurisdiction.

2. The former appeal in this case was decided on the issue of power alone.

3. The "just compensation" provisions of the Act of October 5, 1918 (copied in the appendix to the response in that case) are material.

4. While legislative and administrative construction need not be resorted to, the statute of March 2, 1919, here directly involved being unambiguous, the legislative history fully supports the judgment of the Court of Appeals in this case. Reference is made to the appendix to the response of the Vindicator Company for the history and for the statutes other than those copied by petitioner.

Otherwise this case involves a totally different question from that involved in Wilbur v. The United States, ex rel. Vindicator, above. The Vindicator case involves losses due to the purchase of property. The present case involves losses due to interest paid and we ask that this particular case stand on its own merits and be not confused with other litigation.

ARGUMENT

CORRECTION OF ERRORS IN PETITION

The claim of petitioner that the Court of Appeals took away any discretion from the Secretary other than the discretion he had before the Act of February 13, 1929 to decide purely legal questions, lacks support in the record. The trial judge in the instant case said the Secretary had "properly adjudicated" "the questions of law" (Tr. 40). The Secretary as a legal conclusion said: "It is not believed that the Act contem-

plates the payment of interest on borrowed capital" (Tr. 14). The Court of Appeals held that interest paid on borrowed capital "should be allowed" (Tr. 46). These conclusions of the Secretary, the trial court, and the Court of Appeals deal with a question of law only and the judgment here sought to be reviewed in no way lessens the discretion of the Secretary in dealing with facts.

The conclusion stated at the bottom of page 8 of the petition is therefore erroneous.

THIS IS NOT A CASE OF GENERAL INTEREST

It is not believed that the ex parte statement contained in the footnote (petition page 10) is pertinent; but even if it were, it is misleading in its implication that 111 claims contain items of interest which must be settled in accordance with the final judgment in this case. In an exhibit to petitioner's answer it is said:

> "In this particular case (emphasis ours) as is testified, the then Secretary of the Interior personally requested one of the claimants to operate the properties on a big scale, which claimant at first declined to do unless the government should underwrite the venture. This, of course, was impossible, and after some delay the Secretary, through his personal agent, requested Ashcraft and Wilkinson to use their influence to induce claimant to enlarge his operations, and further he asked them to assist in financing him. Ashcraft and Wilkinson did so use their influence, and with success, and did finance claimants, for which financing claimant is obligated for a large amount." (R. 18).

Again, it is stated:

"The activities of the government to induce Ashcraft and Wilkinson to finance claimant so that war needs might be met quickly and in large measure were personal, direct and effective." (R. 20). (Emphasis ours).

From the admissions above quoted it must be apparent that this is a "particular case" and stands out separately and distinctly as one where not only did the Secretary of the Interior stimulate production, but he personally requested and induced financial interests to lend the money necessary for the enlarged enterprise.

JUST COMPENSATION INCLUDES INTEREST AS SUCH

Waite v. United States, decided February 24, 1931, 75 L. ed. pam. 402; Seaboard Air Line Ry. Co. v. United States, 261 U. S. 299.

EXPENDITURES FOR BORROWED CAPITAL ARE ALLOWABLE

United States v. New York, 160 U. S. 598.

On the former appeal of this case, 267 U. S. 185, this Court stating the issue in United States v. New York, above, said: "The issue, therefore, was merely a question of law." Since the Act of February 13, 1929, the issue here, like that in the New York Case, is "merely a question of law."

In the New York Case money had been borrowed, part of which was from the State's own funds, and Congress authorized the repayment of "costs, charges and expenses." Interest paid on all these borrowed funds was held to be included by this language. Congress here said that "net losses" are to be paid. That money

was borrowed, interest paid thereon, and that such expenditures were lost is admitted.

Here fitting the exact language of the statute, expenditures were made in order to get money with which to prepare to produce, and to produce, pyrites for the urgent needs of the government. Respondent got no profit either on its capital or for its services, and all it asks is the return of its net losses incurred; and that in determining such net losses all its expenditures and all its obligations incurred should be, as the statute says, considered and applied in arriving at the total amount. That respondent is entitled to this is shown by the New York case above.

At page 624, further discussing the question in that case, the court said:

> "We are of opinion that the claim of the state for money paid on account of interest to the commissioners of the canal fund is not one against the United States for interest as such, but is a claim for costs, charges and expenses properly incurred and paid by the state in aid of the general government, and is embraced by the act of Congress declaring that the states would be indemnified by the general government for moneys so expended." (Emphasis supplied.)

Agreeing that the petition for the writ may be presented at the first opportunity, it is respectfully submitted that the petition should be denied.

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May 14th, 1931.